IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 471 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SADHU RAMKUMARDAS GURUSHRI

Appearance:

1. Criminal Appeal No. 471 of 1992
Mr.I.M.Pandya, learned A.P.P. for Appellant No.
MS BANNA S DUTTA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 21/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE SHARAD D.DAVE)

#. This appeal has been preferred by the State under Section 378 of the Criminal Procedure code, 1973 against the judgment and order of acquittal passed by the learned Additional Sessions Judge, Bhavnagar in Sessions Case No.227 of 1991 on 15.02.1992.

#. The short facts of the case are that one unarmed Police Constable, Shri Amrutgiri Shivgiri, lodged one complaint to the effect that on 29.08.1991 he was patrolling along with Police Constables Sureshkumar Bothalal, Pravinsinh Keshuji, Melabhai Hirabhai and Ravindrapuri Manipuri on the highway. When they reached Unava bus-stand, they found one person looking like a Sadhu standing with a bag on his hand in suspicious condition. They brought that person in the police station. On inquiry, he stated his name as Ramkumar Gurushri Govardhandasji, resident of Panchot Gurusthan, Mehsana original resident of Ayodhya Chhota Savniji, Uttar Pradesh. On his search, they found one packet of Ganja from his suitcase weighing 400 gms. After taking sample of 10 gms from the said packet, it was sealed as described in the panchnama. On further search, Rs.500/-and one dhoti of Rs.175/- were found. At the end of investigation, charge sheet was submitted and case was numbered as Sessions Case No.227 of 1991 and charge was framed against the accused. As the accused pleaded not guilty and prayed for trial, the prosecution examined oral witnesses and also placed reliance on the documents. On completion of the same, further statement of the accused under Section 313 of the Criminal Procedure Code was recorded. After hearing the learned counsel for the respective parties, the accused was acquitted by the court below.

#. We have heard the learned counsel for the respective parties. Learned APP for the State, taking us through the oral as well as documentary evidence together with the impugned judgment of the trial court, has submitted that the prosecution has proved the case beyond resonable doubt that the muddamal in question seized from the accused has been found to be contraband article ganja. While doing search and seizure and therafter also, all the required provisions of the NDPS Act have been followed by the prosecution and, therefore, court below ought to have considered the same and accused ought not to have been acquitted.

#. Mrs.Banna Dutta, learned counsel for the respondent-accused, has mainly argued that the prosecution had not followed the required provisions of the NDPS Act after they came to know that the respondent-accused was in possession of contraband article ganja. Even prosecution is not able to prove that the muddamal has been sent to FSL and with whom it was sent. The prosecution has also failed to explain the period of more than three months in sending the muddamal to FSL and also failed to prove that till it reached the FSL, it remained in safe custody and there were no possibility of tampering with the same. Even panchas have also not supported the say of the prosecution and as held by the court below, evidence on record are not trustworthy. It is, therefore, requested that the judgment and order of acquittal delivered by the court below is just, legal and proper and hence, same may not be interfered with.

#. It reflects from the complaint Ex.12, the panchnama Ex.8 and the oral evidence of complainant Ex.11 that all required procedures of NDPS Act have not been followed by the prosecution after they came to know that the respondent is having the possession of contraband article. It is also established from the evidence on record that panch witnesses namely, P.W.No.2 Ex.8 and P.W.No.3 Ex.9 have not supported the say of the prosecution. The only evidence then available is the evidence of the complainant and his complaint. The complainant has fairly admitted that except filing of the complaint, he has not done anything else. The Police Officer, Shri Pandor, has deposed before the court below that the complainant-Shri Amrutgiri has sent the muddamal to FSL. However, the complainant-Shri Amrutgiri has fairly admitted in his deposition that he did not send the muddamal to FLS and does not know who has sent the mdudamal to FSL. Over and above, the Police Officers have not informed their superior officer regarding the contraband article and have also not followed other required provisions of the NDPS Act namely, giving copy of the arrest memo to the accused, etc. It also reflects from the evidence on record that forwarding letter for sending the muddamal to FSL was prepared on 29-8-1991. But it is established that it has not reached the FSL for a considerable period of time. Besides, the prosecution has not examined any person to prove that till the above referred period, muddamal has remained in safe custody without tampering with the same. Even there are no evidence on record to indicate as to who took the muddamal to FSL either. However, facts remain that prosecution has failed to satisfy the Court that during

the above referred period, the muddamal remained in safe custody and there was no possibility of tampering with the same. In these circumstance, after considering all the aspects of the matter, court below has acqitted the accused and since no illegality or irregularity has been committed in delivering the said judgment and order of acquittal, it does not require any interference.

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

> ".... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. In view of the above facts and circumstances, this appeal requires to be dismissed and accordingly it is dismissed.

(R.P.DHOLAKIA, J)

(SHARAD D DAVE, J)
srilatha